

DOCUMENT RESUME

ED 382 536

SO 025 045

TITLE Antidote: Civic Responsibility. Montana Law.
INSTITUTION Phi Alpha Delta Law Fraternity International,
Washington, DC.
SPONS AGENCY Department of Justice, Washington, D.C. Office of
Juvenile Justice and Delinquency Prevention.
PUB DATE 93
CONTRACT 93-JS-CX-005
NOTE 19p.; For related lesson materials, see ED 372 024.
For other state supplements, see SO 025 022-066.
AVAILABLE FROM Phi Alpha Delta Public Service Center, 1511 K Street,
N.W., Suite 611, Washington, DC 20005.
PUB TYPE Guides - Classroom Use - Instructional Materials (For
Learner) (051) -- Guides - Classroom Use - Teaching
Guides (For Teacher) (052)

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Citizenship Education; *Constitutional Law;
*Criminal Law; Drug Education; *Drug Legislation;
High Schools; Illegal Drug Use; Intermediate Grades;
Junior High Schools; *Law Related Education; Middle
Schools; Resource Materials; Social Studies; State
Legislation
IDENTIFIERS *Montana; Phi Alpha Delta Law Fraternity

ABSTRACT

Designed for middle school through high school students, this unit contains eight lesson plans that focus on Montana state law. The state lessons correspond to lessons in the volume, "Antidote: Civic Responsibility. Drug Avoidance Lessons for Middle School & High School Students." Developed to be presented by educators, law student, or attorneys, the state lessons are interactive and sequential, although individual lessons can stand alone. The document includes legal information about driving while intoxicated, drug offenses, sentencing, and drug and alcohol statutes written specifically to combat juvenile abuse. (RJC)

* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *

☒ This document has been reproduced as
received from the person or organization
originating it.

☐ Minor changes have been made to improve
reproduction quality.

• Points of view or opinions stated in this docu-
ment do not necessarily represent official
OEI position or policy.

Antidote: Civic Responsibility

"PERMISSION TO REPRODUCE THIS MATERIAL
IN OTHER THAN PAPER COPY HAS BEEN
GRANTED BY

JACK C
HANNA

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)."

Montana Law

Phi Alpha Delta Public Service Center

• 1511 K Street, NW • Suite 611 • Washington, DC 20005 •

• 202-638-2898 • fax 202-638-2919 •

BEST COPY AVAILABLE

Montana Law

Lesson 1

1. Has Aimee violated any State laws? Have her parents?

Aimee has broken no laws since a minor cannot be held legally responsible for an unintentionally dangerous act toward another minor. The girls' parents, however, may be guilty of child abuse or neglect. Mont. Code Ann. § 41-3-102(5)(a) (1993) defines "child abuse or neglect" as "harm to a child's health or welfare"; this term is further defined in subsection (8) as "the harm that occurs whenever the parent or other person responsible for the child's welfare inflicts or allows to be inflicted upon the child physical or mental injury . . . or fails to supply clothing, shelter, education, or adequate health care. . . ." Leaving Aimee unsupervised to care for her sick sister may be an unreasonable degree of responsibility for a 10-year-old girl, harming her psychologically, or it may allow Aimee to injure her sister by giving her aspirin without supervision; it may also constitute lack of adequate health care.

Montana law imposes liability for negligence as well as willful acts: "[E]veryone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care" Mont. Code Ann. § 27-1-701 (1993). If the parents habitually leave both children without adequate supervision or leave a sick child without adequate medical care, their behavior constitutes negligence which creates a substantial risk of injury to the children. If this is the case, they are guilty of negligent endangerment, "conduct that creates a substantial risk of death or serious bodily injury to another. . . ." Mont. Code Ann. § 45-5-208 (1993). The penalty for negligent endangerment is a fine of up to \$1,000, imprisonment in the county jail for up to one year, or both.

Mont. Code Ann. § 40-6-211 (1993) states: "The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances." This establishes the parents' duty of care and support for their children. Thus, the parents may also be charged with endangering the welfare of children by knowingly "violating a duty of care, protection, or support"; neglect or lack of proper medical care are among the factors which constitute admissible evidence of a violation of duty of care, protection, or support. The penalty for a first offense is a fine of up to \$500, imprisonment in the county jail for up to six months, or both. Mont. Code Ann. § 45-5-622 (1993). They may also be charged with nonsupport, failing "to provide support that the person can provide and that the person knows the person is legally obliged to provide to a . . . child. . . ." Mont. Code Ann. § 45-5-621 (1993). Social workers, police officers or the county attorney may, if they have reason to believe a child is in "immediate or apparent danger of harm," may immediately remove a child from her home and place her in a protective facility, then follow set procedures to make arrangements for her well-being. Mont. Code Ann. § 41-3-301 (1993). Following these procedures, the court may issue an order for relief, including but not limited to medical and psychological evaluation of the children and parents; counseling services; or temporary removal of the children from the home. Mont. Code Ann. § 41-3-403 (1993). Finally, if parental abuse is established, the remedy may be a civil action which may free the children from the dominion of the parents and

enforce the duty of support and education. Mont. Code Ann. § 40-6-233 (1993).

2. **Does State statute allow 17-year-old Tyrell to drink a glass of wine with his dinner without his parents' consent?**

Tyrell may not drink the wine at all, even if his parents have provided it, because it is unlawful for a person under the age of 19 to knowingly consume or have in his possession an intoxicating substance. Mont. Code Ann. § 45-5-624(1)(a) (1993). He may be fined up to \$50 and be required to perform community service. If his parents provide the wine for him, they may have violated Mont. Code Ann. § 16-6-305(1)(b) (1993), which states: "A parent, guardian or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age."

3. **Is Maria violating any law when she tells her roommates whom to call to buy marijuana?**

Whether Maria's actions constitute a crime depends largely on the extent of her involvement with the actual seller of the marijuana. If Maria is merely telling her friends the identity of someone she believes sells marijuana, she is probably not violating any statute. If she is acting to facilitate a drug purchase, i.e. is a key element in the sale of the marijuana and receives some consideration for her participation, she may be considered to have constructive possession of the drugs and could be charged with criminal possession of dangerous drugs, even though she does not have physical possession. Mont. Code Ann. § 45-9-102(1) (1993). For small amounts of marijuana, a first offense constitutes a misdemeanor carrying a penalty of up to six months' imprisonment in the county jail or a fine of between \$100 and \$500. The penalties are more severe for second or subsequent offenses or larger amounts of marijuana or hashish. Mont. Code Ann. § 45-9-102(2) (1993). If she is attempting to sell the marijuana, Maria is guilty of criminal possession with intent to sell; the penalty for possession of marijuana with intent to sell is a term of up to 20 years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-103(1), (3) (1993). If Marie is involved in this way, she may also be guilty of conspiracy under Mont. Code Ann. § 45-4-102(1) (1993). A person convicted of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the subject of the conspiracy. Mont. Code Ann. § 45-4-102(3) (1993).

If Maria is participating in a drug conspiracy, she may also be violating federal law under 18 U.S.C.A. § 371 (West 1993), which prohibits conspiracy to commit any offense against the United States, and 21 U.S.C.A. § 846 (West 1993), which prohibits any attempt or conspiracy to commit any violation of federal drug control statutes.

4. **Have Adam and Alex broken any laws other than those against drinking and fighting?**

The twins are breaking several laws. First, they are guilty of disorderly conduct, defined

under Mont. Code Ann. § 45-8-101(1) (1993) as knowingly disturbing the peace by actions such as quarreling, fighting, using threatening or abusive language, or "creating a hazardous . . . condition by an act that serves no legitimate purpose." The penalty for this offense is a fine of up to \$100, imprisonment in the county jail for up to 10 days, or both. Depending on the circumstances of the fight, the boys may be guilty of negligent endangerment, "negligently engag[ing] in conduct that creates a substantial risk of death or serious bodily injury to another," which is punishable by a fine of up to \$1,000, imprisonment in the county jail for up to one year, or both. Mont. Code Ann. § 45-5-208 (1993). Another possible charge is criminal endangerment, "knowingly engag[ing] in conduct that creates a substantial risk of death or serious bodily injury to another," punishable by a fine of up to \$1,000, imprisonment in the county jail for up to one year, or both. Mont. Code Ann. § 45-5-207 (1993).

The twins may be guilty of, or be victims of, assault. "A person commits the offense of assault if he purposely or knowingly causes bodily injury to another; . . . purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or purposely or knowingly causes reasonable apprehension of bodily injury in another." The penalty for assault is a fine of up to \$500 or imprisonment of up to six months, or both. Mont. Code Ann. § 45-5-201 (1993). "A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another." The penalty for aggravated assault is imprisonment in the state prison for at least two years and up to 20 years, or a fine of up to \$50,000 or both. Mont. Code Ann. § 45-5-202 (1993).

More seriously, the twins are likely to be charged with homicide. If the twins acted deliberately, with intent to harm Joe, the charge may be deliberate homicide, "purposely or knowingly caus[ing] the death of another human being," which is punishable by death, by life imprisonment, or by imprisonment in the state prison for a term of 10 to 100 years, depending on the circumstances of the crime. Mont. Code Ann. § 45-5-102 (1993). If the twins acted under extreme provocation, it may mitigate their act. Mitigated deliberate homicide is homicide committed "under the influence of extreme mental or emotional stress for which there is a reasonable explanation or excuse." Mont. Code Ann. § 45-5-103 (1993). If Joe's death was an accident caused by the twins' negligence, they may be guilty of negligent homicide, "negligently causing the death of another human being," which is punishable by imprisonment in the state prison of up to 10 years or a fine of up to \$50,000, or both. Mont. Code Ann. § 45-5-104 (1993).

The fact that the twins have been drinking does not excuse them from liability for their actions. "A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense. . . ." Mont. Code Ann. § 45-2-203 (1993).

5. **Has Jose violated any State law even though he is not drinking? Has Carlos or TJ violated any State law?**

If Carlos and TJ are drinking in the car, all three have violated Mont. Code Ann. § 16-3-106 (1993). This section prohibits opening, breaking or allowing to be broken any

package or vessel containing an alcoholic beverage, or drinking, using or allowing to be drunk or used any alcoholic beverage therefrom while being conveyed.

Carlos and TJ are also guilty of other violations. TJ is under 21; it is unlawful for a person under the age of 21 to knowingly have in his possession an intoxicating substance. Mont. Code Ann. § 45-5-624(1)(b) (1993). If TJ bought the alcohol himself with a fake ID, he has violated Mont. Code Ann. § 16-3-305(3) (1993), which prohibits fraudulently misrepresenting age to any dispenser of alcoholic beverages or falsely procuring any identification card or altering any identification card. Such misrepresentation is also prohibited under Mont. Code Ann. § 16-6-301(4) (1993) and is punishable under § 45-5-624(2)(b) by a fine of up to \$50 for a first offense. Subsequent offenses carry higher fines and, eventually, up to six months imprisonment in the county jail. If Carlos provided the alcohol to TJ or helped TJ obtain it, he has broken several laws. Mont. Code Ann. § 16-6-305(1)(b) (1993) states: "A parent, guardian or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age." Similarly, Mont. Code Ann. § 16-6-301(3)(a) (1993) states: "It is unlawful for any licensee, his or her employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered or given away to any person under 21 years of age." Carlos may also be guilty of unlawful transactions with children, "sell[ing] or giv[ing] an alcoholic beverage to a person under 21 years of age." Mont. Code Ann. § 45-5-623(1)(c). A first offense under this section is punishable by a fine of up to \$500 or imprisonment in the county jail for up to six months, or both.

6. **Is Dr. Melrose committing any violation by prescribing painkillers without conducting an examination or determining need?**

Most scheduled drugs may not be dispensed without the written, or in some cases oral, prescription of a medical practitioner; a dangerous drug included in Schedule V, such as what?, cannot be distributed for other than a medical purpose. Mont. Code Ann. § 50-32-208 (1993). If Dr. Melrose prescribes any of these drugs without determining medical need, he is violating this section and his prescription will not be valid. This offense is a misdemeanor punishable by a fine of up to \$1,000, up to one year in the county jail, or both. Thus, under Mont. Code Ann. § 45-9-101 (1993), Dr. Melrose is guilty of criminal sale of dangerous drugs, which includes selling, bartering, exchanging, giving away or offering to sell any dangerous drug as defined elsewhere in the code. Subsection (6) of this section specifically states that "[p]ractitioners . . . acting in the course of a professional practice . . . are exempt from this section," but since a reputable physician does not ordinarily prescribe drugs without an examination, Dr. Melrose's conduct is not within the course of legitimate practice. In fact, Dr. Melrose stands to lose his license for unprofessional conduct, which includes "administering, dispensing, or prescribing a narcotic or hallucinatory drug . . . otherwise than in the course of legitimate or reputable professional practice." Mont. Code Ann. § 45-9-101(9) (1993).

Dr. Melrose is violating not only state but federal law. Under U.S. law 21 U.S.C.A. § 829 (West 1993), a physician must have a legitimate medical purpose for dispensing

drugs, and the act of dispensing or prescribing drugs should be within the usual course of professional practice. U.S. v. Varma, 691 F.2d 460 (1982); U.S. v. Jamieson, 605 F.Supp. 119 (1985).

Dr. Melrose's patients, if they do not provide to him a bona fide reason for needing the painkillers, may be guilty of fraudulently obtaining dangerous drugs. A first conviction of this offense is punishable by one to five years in the state prison, a fine of up to \$50,000, or both; a second conviction, by five to 10 years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-106 (1993). Since the prescription would not be valid, the person obtaining the drugs would then be in criminal possession of the drugs, which is punishable by up to five years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-102 (1993). Similarly, federal law 21 U.S.C.A. § 843 (West 1993) prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge, and 21 U.S.C.A. § 844 (West 1993) prohibits simple possession of a controlled substance unless such substance was obtained by valid prescription.

7. **Is Danielle violating any law by taking only one or two pills from someone else's prescription?**

First of all, Danielle is stealing. Theft is defined as "when [a] person knowingly or purposely obtains or exerts unauthorized control over property of the owner and has the purpose of depriving the owner of the property; purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property." Mont. Code Ann. § 45-6-301(1) (1993). A theft of property not exceeding \$500 in value is punishable by a fine of up to \$500, up to six months in the county jail, or both; a theft of property exceeding \$500 in value is punishable by a fine of up to \$50,000, up to 10 years in the state prison, or both. Mont. Code Ann. § 45-6-301(6)(a), (b) (1993).

More seriously, Danielle is violating several state and federal drug control laws. She is guilty of fraudulently obtaining dangerous drugs. A first conviction of this offense is punishable by one to five years in the state prison, a fine of up to \$50,000, or both; a second conviction, by five to 10 years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-106 (1993). She is also in criminal possession of the drugs, which is punishable by up to five years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-102 (1993). She is also violating U.S. law under 21 U.S.C.A. § 843 (West 1993), which prohibits knowingly or unknowingly acquiring possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge, and 21 U.S.C.A. § 844 (West 1993), which prohibits simple possession of a controlled substance unless such substance was obtained by prescription. The seriousness of her crime under these drug control codes will depend on the type of drugs she takes from the customers' prescriptions and what she does with them.

8. **Is Renee breaking state law even though she is not selling the drugs herself?**

Even though she is not selling the drugs directly, Renee is violating state and federal laws. She is in criminal possession of dangerous drugs, which is punishable by up to five years in the state prison, a fine of up to \$50,000, or both. Mont. Code Ann. § 45-9-102 (1993). Furthermore, she is in criminal possession with intent to sell dangerous drugs, a violation of Mont. Code Ann. § 45-9-103(1) (1993). If she is dealing opiates, the sentence is two to 20 years and a fine of up to \$50,000; if she is dealing other drugs, the sentence is up to 20 years and a fine of up to \$50,000. Mont. Code Ann. § 45-9-103(2), (3) (1993). When she sells the drugs through her minor daughter, she is considered to be in control of the child's actions and is legally accountable for the child's actions because she promoted, facilitated or solicited the child's commission of the crime. Mont. Code Ann. § 45-2-302(3) (1993). She has therefore violated Mont. Code Ann. § 45-9-101(1) (1993), criminal sale of dangerous drugs. The penalty for violation of this section depends on the type of drug involved; the maximum sentence is life imprisonment in the state prison and a fine of up to \$50,000. Mont. Code Ann. § 45-9-101(2) (1993). As an adult selling dangerous drugs to minors, Renee is subject to mandatory minimum sentencing, which again is dependent on the type of drug involved but is no less than four years' imprisonment in the state prison and a fine of up to \$50,000. Mont. Code Ann. § 45-9-101(5) (1993). She may also have violated Mont. Code Ann. § 50-32-208 (1993), dispensing dangerous drugs without a prescription.

If Renee is part of a drug ring, she may also be guilty of conspiracy under Mont. Code Ann. § 45-4-102(1) (1993). A person convicted of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the subject of the conspiracy. Mont. Code Ann. § 45-4-102(3) (1993).

Renee is also violating similar federal statutes such as 21 U.S.C.A. § 841 (West 1993), prohibiting possession of a controlled substance with the intent to manufacture, distribute or dispense such substance; 21 U.S.C.A. § 844 (West 1993), prohibiting simple possession of a controlled substance; and 21 U.S.C.A. § 861 (West 1993), prohibiting the knowing and intentional use of any person under 18 years of age to violate any federal drug control provision. If Renee is participating in a drug conspiracy, she may also be violating federal law under 18 U.S.C.A. § 371 (West 1993), which prohibits conspiracy to commit any offense against the United States, and 21 U.S.C.A. § 846 (West 1993), which prohibits any attempt or conspiracy to commit any violation of federal drug control statutes.

By involving her young daughter in the drug trade, Renee has added seriously to her offenses. Mont. Code Ann. § 40-6-211 (1993) states: "The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances." This establishes parents' duty of care and support for their children. Because she is using the girl in dangerous drug activity, Renee's conduct constitutes "endangering the child's welfare by violating a duty of care, protection, or support." Mont. Code Ann. § 45-5-622(1) (1993). A person convicted of endangering the welfare of children shall be fined up to \$500 or imprisoned in the county jail for up to six months, or both. A second offense is punishable by a fine of up to \$1,000 or imprisonment in the county jail for up to six months, or both. Mont. Code Ann. § 45-5-622(3) (1993). She may also be charged

with nonsupport, failing "to provide support that the person can provide and that the person knows the person is legally obliged to provide to a . . . child. . . ." Mont. Code Ann. § 45-5-621 (1993). Social workers, police officers or the county attorney may, if they have reason to believe a child is in "immediate or apparent danger of harm," may immediately remove a child from her home and place her in a protective facility, then follow set procedures to make arrangements for her well-being. Mont. Code Ann. § 41-3-301 (1993). Following these procedures, the court may issue an order for relief, including but not limited to medical and psychological evaluation of the children and parents; counseling services; or temporary removal of the children from the home. Mont. Code Ann. § 41-3-403 (1993). Finally, if parental abuse is established, the remedy may be a civil action which may free the children from the dominion of the parents and enforce the duty of support and education. Mont. Code Ann. § 40-6-233 (1993).

In addition, Renee could receive heavier sentencing under federal statutes. Under 21 U.S.C.A. § 859 (West 1993), the distribution of a controlled substance to a person under 21 years of age is subject to increased penalties. The United States expressed its concern with the importance of protecting children from drug trafficking under 21 U.S.C.A. § 860 (West 1993), which imposes heavier prison sentences in cases involving the distribution or manufacture of controlled substances in the proximity of schools, playgrounds, or youth centers. 18 U.S.C.A. App. 4 § 3B1.3 (West 1993) also provides for increased sentences in cases of abuse of position of trust, as in a drug trafficking defendant's involvement of her young daughter in the drug trade. U.S. v. Ledesma, 979 F.2d 816 (1992).

9. **Did Jim violate any law other than those regarding controlled substances?**

Jim's and Andre's use of a syringe or hypodermic needle to use a dangerous drug violates several state laws. Mont. Code Ann. § 45-10-101 (1993) defines "drug paraphernalia" as "all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug"; including but not limited to scales, sifters, pipes, roach clips, miniature spoons, and bongs. Mont. Code Ann. § 45-10-103 (1993) prohibits the use of or possession with intent to use drug paraphernalia "to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug." Violation of this section constitutes a misdemeanor punishable by imprisonment in the county jail for up to six months, a fine of up to \$500, or both. Under Mont. Code Ann. § 45-10-104 (1993), "[i]t is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia," knowing that it will be used for any of the above purposes. Violation of this section is also a misdemeanor punishable by imprisonment in the county jail for up to six months, a fine of up to \$500, or both. If either Jim or Andre is a minor and received the drug paraphernalia from the other, there may have been a violation of Mont. Code Ann. § 45-10-104 (1993), which states: "Any person 18 years

of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than \$1,000, or both."

Jim's transmission of the HIV virus and Andre's resultant death are potentially more serious. The state legislature has not yet created any law dealing specifically with the transmission of the HIV virus nor has it arisen in the state courts. Under the Model Penal Code, however, such behavior could constitute simple or aggravated assault or the attempt thereof, or reckless endangerment; under certain extreme situations, it could be construed as murder. See Gene Schultz, *AIDS: Public Health and the Criminal Law*, 7 St. Louis U. Pub. L. Rev. 65 (1988); Roger N. Braden, *AIDS: Dealing With the Plague*, 19 N. Ky. L. Rev. 277 (1992). In some cases, it has been suggested that the HIV virus provides a deadly weapon. Cf. *Brock v. State*, 555 So.2d 285 (Ala. Crim. App. 1989).

Shooting up with heroin is recognized as a life-threatening act. Andre's conduct in helping Jim use a dangerous drug may be found to be negligent or criminal. He may be charged in Jim's death by overdose with negligent or criminal endangerment, which is negligently or criminally engaging in conduct that creates a substantial risk of death or serious bodily injury to another (Mont. Code Ann. § 45-5-208; §45-5-207 (1993)); negligent homicide, negligently causing the death of another (Mont. Code Ann. § 45-5-104 (1993)); or even deliberate homicide, purposely or knowingly causing the death of another human being (Mont. Code Ann. § 45-5-102 (1993)).

The fact that Jim and Andre acted while intoxicated by drug use does not excuse them from liability for their actions. "A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense. . . ." Mont. Code Ann. § 45-2-203 (1993).

10. **Has the bartender or the owner at Bulldog's Bar and Grill violated any law?**

There is no statute in Montana prohibiting the sale of alcohol to an intoxicated person, so the bartender and the bar owner have not broken any law in serving Su. However, Su may, because of her drunkenness, have an accident if she drives from the bar. She could damage property, injure or even kill someone. A person furnishing alcohol may be held liable in a civil action for any damage or injuries arising from an event involving the person who consumed the alcohol if the consumer was a minor and the server knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age; if the consumer was visibly intoxicated, as was Su; or if the server forced or coerced the consumption or told the consumer that the beverage contained no alcohol. Mont. Code Ann. § 27-1-710 (1993).

Lesson 2

**CRIMINAL JUSTICE STATISTICS:
DRUG AND ALCOHOL RELATED OFFENSES
UNIFORM CRIME REPORT DATA OF 1990—CRIME IN THE UNITED STATES**

According to the Uniform Crime Report of 1990, 68% of the drug abuse violators were arrested for possession of heroin, cocaine or a narcotic derivative. A little over 31% of drug arrests were for the sale and manufacture of drugs.

Out of the 14,195,100 total number of arrests that occurred in 1990, drug abuse violations accounted for 1,089,500, driving under the influence comprised 1,810,800, and liquor law violations represented 714,700 of the total.

1981-1990 Ten Year Trend

Arrests for Drug Abuse Violations

In 1981, the total number of arrests for drug abusers under the age of 18 was 69,383. On the other hand in 1990, the total number was 50,435. This represents a 27.3% decrease in the number of arrests for persons under the age of 18. However, the number of arrests for persons over the age of 18 represent an 89.9% increase from 332,733 in 1981 to 631,932 in 1990.

Liquor Law Violations

For persons over the age of 18, the number of arrests for liquor law violations have dramatically increased to 61% from 218,079 in 1981 to 351,064 in 1990. However, the number of arrests for persons under the age of 18 has decreased to less than 0.4%.

♦ ♦ ♦

**Criminal Victimization in the United States, 1990
*A National Crime Victimization Survey Report, February, 1992***

Percent Distribution of Victimizations by Perceived Drug or Alcohol Use by Offender:

- ♦ Of the 130,260 total rapes reported by victims to police, 49.8% were believed to be committed by someone under the influence of drugs or alcohol.
- ♦ Of a total of 1,149,710 reported robberies, 24.2% involved an offender under the influence of drugs or alcohol.
- ♦ Of 1,600,760 aggravated assaults committed 40% were committed by people under the influence of drugs.
- ♦ Of the 3,128,130 simple assaults reported, 32.9% were perpetrated by someone perceived to be under the influence of drugs or alcohol.

Montana Law

Lesson 4

FEDERAL SCHEDULE (answers to handout 3)

DRUG	SCHEDULE
heroin	schedule 1
beer	not a scheduled drug
vodka	not a scheduled drug
nitrate	not a scheduled drug
amphetamines	schedule 3
caffeine	not a scheduled drug
marijuana	schedule 1
crack	schedule 2
scotch	not a scheduled drug
MSG	not a scheduled drug
cocaine	schedule 2
glue	not a scheduled drug

FEDERAL PENALTIES BY SCHEDULE FOR POSSESSION

SCHEDULE	MAX. PRISON	MAX. FINE	MAX. TOTAL
schedule 1	15 years	\$25,000	15yrs + \$25,000
schedule 2	15 years	\$25,000	15yrs + \$25,000
schedule 3	5 years	\$15,000	5yrs + \$15,000
schedule 4	3 years	\$10,000	3yrs + \$10,000
schedule 5	1 year	\$ 5,000	1yr + \$ 5,000
unscheduled drug	n/a	n/a	n/a

The penalty doubles if the defendant has a previous conviction for a schedule law violation.

In order for a drug to be a narcotic, it must be a derivative of opium. All narcotics contain opium or opium derivatives, ie: heroin.

Malt beverages such as beer are not included in the scheduling process. They are controlled by liquor laws.

Information from 21 U.S.C.A. § 841 (West 1981).

Montana Law

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
--------	--------	---------	-------	-----------	-------------

Alabama	sch 1	sch 2	sch 2	sch 1	sch 3
Alaska	sch 1A	sch 2A	sch 2A	sch 3A	sch 4A
Arizona	sch 1	sch 2	sch 2	sch 1	sch 2
Arkansas	sch 1	sch 2	sch 2	sch 1	not listed
California	sch 1	sch 2	sch 2	sch 1	sch 2
Colorado	sch 1	sch 2	sch 2	sch 1	sch 2
Connecticut	sch 1	sch 2	sch 2	sch 1	sch 3
Delaware	sch 1	sch 2	sch 2	sch 1	sch 2
D.C.	sch 1	sch 2	sch 2	sch 2	sch 2
Florida	sch 1	sch 2	sch 2	sch 1	sch 2
Georgia	sch 1	sch 2	sch 2	sch 1 ¹	sch 2
Hawaii	sch 1	sch 2	sch 2	sch 1	sch 2
Idaho	sch 1	sch 2	sch 2	sch 1	sch 2
Illinois	sch 1	sch 2	sch 2	listed under its act: the Cannabis Control Act, 56 1/2 §701 et seq	sch 2
Indiana	sch 1	sch 2	sch 2	sch 1	sch 2
Iowa	sch 1	sch 2	sch 2	sch 1	sch 2
Kansas	sch 1	sch 2	sch 2	sch 1	sch 1
Kentucky	sch 1	sch 2	sch 2	sch 1	sch 2
Louisiana	sch 1	sch 2	sch 2	sch 1	sch 2
Maine ²	sch W	sch W	sch W	sch W & Z	sch W
Maryland	sch 1	sch 2	sch 2	sch 1	sch 1

¹ Must have more than 15% THC (tetrahydrocannabinol), the chemical in the cannabis plant.

² Maine schedules its drugs under an alphabetical category: W, X, Y & Z. The schedules are similar to other state categorizations.

Montana Law

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
--------	--------	---------	-------	-----------	-------------

Massachusetts ³	class A	class B	class B	class D	class B
Michigan	sch 1	sch 2	sch 2	sch 1	sch 2
Minnesota	sch 1	sch 2	sch 2	sch 1	sch 2
Mississippi	sch 1	sch 2	sch 2	sch 1	sch 2
Missouri	sch 1	sch 2	sch 2	sch 1	sch 2
Montana	sch 1	sch 2	sch 2	sch 1	sch 2
Nebraska	sch 1	sch 2	sch 2	sch 1	sch 2
Nevada ⁴	sch 1	sch 2	sch 2	sch 1	sch 3
New Hampshire	sch 1	sch 2	sch 2	sch 1	sch 3
New Jersey	sch 1	sch 2	sch 2	sch 1	sch 3
New Mexico	sch 1	sch 2	sch 2	sch 1 & 2	sch 2
New York	sch 1	sch 2	sch 2	sch 1	sch 2
North Carolina	sch 1	sch 2	sch 2	NC has a sixth schedule which incl. marijuana	sch 2
North Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Ohio	sch 1	sch 2	sch 2	sch 1	sch 2
Oklahoma	sch 1	sch 2	sch 2	sch 1	sch 2
Pennsylvania	sch 1	sch 2	sch 2	sch 1	sch 2
Puerto Rico	sch 1	sch 2	sch 2	sch 1	sch 3
Rhode Island	sch 1	sch 2	sch 2	sch 1	sch 2
South Carolina	sch 1	sch 2	sch 2	sch 1	sch 2

³ Massachusetts calls their schedules classes, but they are the same thing.

⁴ While Nevada does not specifically name drugs under its five schedules, but instead lists the specific tests to determine under which schedule a drug belongs § 453.2182 says that the state will use 21 USC as a guide for scheduling. The state merely reserves the right to reschedule any controlled substance as it sees fit according to the tests set out in 453.166, et. seq.

Montana Law

States	Heroin	Cocaine	Crack	Marijuana	Amphetamine
--------	--------	---------	-------	-----------	-------------

South Dakota	sch 1	sch 2	sch 2	sch 1	sch 2
Tennessee	sch 1	sch 2	sch 2	sch 2, but only for certified patients under the Controlled Substances Therapeutic Research Act	sch 2
Texas	sch 1	sch 2	sch 2	sch 1	sch 2
Utah	sch 1	sch 2	sch 2	sch 1	sch 2
Vermont	sch 1	sch 2	sch 2	sch 1	sch 3
Virginia	sch 1	sch 2	sch 2	not listed, but liquid marijuana or hashish oil is listed as sch 1	sch 2
Washington	sch 1	sch 2	sch 2	sch 1	sch 2
West Virginia	sch 1	sch 2	sch 2	sch 1	sch 2
Wisconsin	sch 1	sch 2	sch 2	sch 1	sch 2
Wyoming	sch 1	sch 2	sch 2	sch 1	sch 2

Montana Law

Lesson 5

OFFENSE/SUBSTANCE	SENTENCE
First Offense: Cocaine - Possession With Intent To Distribute - 5 kg	■ imprisonment not to exceed 20 years, and/or ■ fine not to exceed \$50,000
First Offense: Trace of Heroin - Possession of 1 kg or more of a mixture with a small, but detectable amount of heroin	■ imprisonment not to exceed 5 years, and/or ■ fine not to exceed \$50,000
First Offense: Codeine - Possession - 200 mg	■ imprisonment not to exceed 5 years, and/or ■ fine not to exceed \$50,000
Second Offense: Marijuana - Possession - 50 kg	■ imprisonment not to exceed 5 years, and/or ■ fine not to exceed \$50,000
Third Offense - Methamphetamine - Possession - 100 g	■ imprisonment not to exceed 5 years, and/or ■ fine not to exceed \$50,000

Cite: Mont. Code Ann. §45-9-102.

Current Federal Penalties:

Group 1 and Group 2: . . . person shall be sentenced to prison which may not be less than 10 years or more than life and a fine not to exceed 4 million dollars.

Group 3: . . . person shall be sentenced to a term of imprisonment of not more than one year, a fine not exceed \$250,000 in the case of an individual.

Group 4: . . . person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed \$500,000.

Group 5: . . . person shall be sentenced mandatory life imprisonment without release and fine not to exceed \$8 million.

Cite: 21 U.S.C. § 841 (1992).

Montana Law

Lesson 6 & 7

1. What does DWI stand for?

Driving while intoxicated.

2. What does DUI stand for?

Driving under the influence. Under §61-8-406 it is unlawful for any person to operate a vehicle with a blood alcohol concentration of 0.10 or more.

3. In terms of penalties, is being convicted of DWI more serious than being convicted of DUI?

There is no distinction under Montana law.

4. What are the penalties for being convicted of DWI? DUI?

Under §61-8-722 violators of §61-8-406 will be punished as follows:

CONVICTION	PUNISHMENT
first	• jail for not more than 10 days, and • a fine of \$100 to \$500, and • license suspended for 6 months
second	• jail for 48 hours to 30 days, and • a fine of \$300 to \$500, and • license suspended for 1 year
third & subsequent	• jail for 48 hours to 6 months, and • a fine of \$500 to \$1000, and • license suspended for one year

5. What is the penalty for refusing to submit to a breathalyzer test upon a police officer's reasonable request?

Under §61-8-402 any person who drives a vehicle within the state of Montana is consents to a breath test. Upon a first refusal of the test the license will be suspended for 90 days. Upon a second or subsequent refusal in 5 years the license will be revoked for 1 year.

6. What must a person's blood alcohol content (BAC) be before he/she is legally intoxicated?

Under §61-8-406 if a person's BAC is 0.10 or more s/he is legally intoxicated.

7. The legal limit for blood alcohol is lower for persons under the legal drinking age of 21. True or False?

False. Montana law does not make a distinction between those over 21 and those under 21.

8. An open container of alcohol can be in your car if you are 21 or over. True or False?

Montana Law

Under §16-3-106 no person shall open or break any container with alcohol or drink any alcohol while or riding as a passenger in a motor vehicle.

Montana Law

Lesson 9

Although the drinking age is 21 in all 50 states (meaning specifically that the sale of alcohol to minors is prohibited), the laws on teenage drinking vary from state to state. The laws vary in regard to whether they include prohibition of the purchase of alcohol, the attempt to purchase alcohol, the consumption of alcohol and the possession of alcohol. According to the March 11, 1993 Safety Recommendation report of the National Transportation Safety Board,

- ♦ Five states (DE, FL, MT, NH & NY) and the District of Columbia do not prohibit the purchase of alcohol by minors.
- ♦ West Virginia and the District of Columbia do not prohibit public possession of alcohol by minors.
- ♦ 23 states (AK, AR, DE, DC, FL, GA, RI, IL, IA, LA, ME, MD, MI, MS, MT, NV, NH, NY, SC, TX, UT, VT, VA) do not prohibit minors from attempting to purchase alcohol.
- ♦ 21 states (AR, CO, CT, FL, GA, HI, IA, KY, LA, MA, MS, MO, NE, NH, NM, NC, OR, SC, VT, WV, WY) do not prohibit alcohol consumption by minors.
- ♦ 16 states (AR, CA, CO, HI, KY, LA, ME, MI, NM, NY, NC, OK, SD, VA, WA, WY) do not prohibit minors from misrepresenting their age in order to purchase alcohol.
- ♦ 19 states (AL, AR, CO, DE, DC, IA, KS, LA, MD, MN, MT, NJ, OR, PA, SC, UT, VA, WA, WI) do not prohibit minors from presenting false ID to purchase alcohol.

In addition, most states do not prohibit minors from driving with alcohol in their blood unless their blood alcohol content reaches the adult legal limit, which is .10 percent in most states. Fifteen states, however, have amended their laws to lower for minors the permitted blood alcohol content while driving. These laws vary according to the age under which minors must be in order for the lower blood alcohol content to apply. Here is the layout for state laws on blood alcohol content for minors while driving:

<u>0.00 BAC</u>	<u>0.01 BAC</u>	<u>0.02 BAC</u>	<u>0.04 BAC</u>	<u>0.05 BAC</u>	<u>0.06 BAC</u>
AZ (<21)	NJ (<21)	ME (<21)	RI (<21)	CA (<18)	GA (<18)
NC (<19)		MD (<21)	NH (<21)	NM (<18)	
OR (<21)		OH (<18)			
UT (<21)		VT (<18)			
WI (<18)					

A number of states have tried to cut down on teenage driving accidents by implementing nighttime driving restrictions. The following states have some form of curfew for teenage driving:

- ID: minors <16 can drive during the daytime only
- IL: minors <17 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
- LA: minors <15 cannot drive between 11pm-6am Mon-Thur and 12am-6am Fri-Sun
- MD: minors <16 cannot drive between 12am-5am
- MA: minors <18 cannot drive between 1am-4am
- NY: minors <18 cannot drive between 9pm-5am
- PA: minors <18 cannot drive between 12am-5am
- SD: minors <16 cannot drive between 8pm-6am.